Seventh Annual Report

of

Prince Edward Island

Human Rights Commission

1983

The Honourable George R. McMahon, Q.C.
Minister Responsible for Human Rights
Province of Prince Edward Island

Sir:

We are privileged to submit to you, the Minister Responsible for Human Rights within the Province of Prince Edward Island, the Seventh Annual Report of the Prince Edward Island Human Rights Commission for the calendar year ending December 31, 1983.

Respectfully submitted,

Allan F. MacDonald
Chairperson

CHAIRPERSON'S REMARKS

The presentation of our annual report offers an occasion both to review the Commission's work during the past year and to outline future activity.

1983 was a full and eventful year in the life history of this Commission. The conclusion of the first board of inquiry made clear that serious deficiencies exist in the laws and regulations governing boards of inquiry. It is vitally important that this weakness in the human rights process be corrected as soon as possible.

A highlight in 1983 was the publication, "Human Rights Awareness", the report of the Commission's research into human rights in the Province. This study underlined the need of a much expanded effort in education in human rights.

The celebration in December of the 35th anniversary of the Universal Declaration of Human Rights served to recall its magnificent principles of justice and right. It is for the communication of these principles and their application in practice that this Commission readies itself for the future.

The Commissioners express with warmth and appreciation their thanks to the executive director and administrative officer. The contributions of both have been inestimable.

THE P. E. I. HUMAN RIGHTS ACT

The P. E. I. Human Rights Act was assented to by His Honour the Lieutenant Governor on December 12, 1975, and proclaimed by the Lieutenant Governor in Council in September, 1976. The Act became the paramount law of the Province in September of 1979, three years from the date of its proclamation. The target of the Act is the elimination of discrimination and though the term "human rights" encompasses a wide variety of rights, the Human Rights Commission can only deal with discrimination in certain specific areas and for a limited number of reasons.

The P. E. I. Human Rights Act protects Island residents from discrimination in four areas -- employment and access to services, accommodations and facilities because of race, religion, creed, colour, sex, marital status, ethnic or national origin, physical disability, age and political belief. Age, in the Act, is defined as being between the ages of 18 and 65. The Act also prohibits discrimination in pay and employers must give equal pay for people doing essentially the same work.

The P. E. I. Human Rights Act is not a criminal code nor is the Commission a court of law. The Commission has the responsibility to investigate and attempt to settle any complaint filed under the Act. If the Commission is unable to accomplish this, a report is forwarded to the Minister Responsible for Human Rights and he has the authority to convene a Board of Inquiry to deal with the complaint. The Commission, however, is a party to any complaint coming before a Board of Inquiry.

THE HUMAN RIGHTS COMMISSION

The P. E. I. Human Rights Commission, as mandated by the P. E. I. Human Rights Act, is composed of three Commissioners. These Commissioners are appointed for a three-year term by the Lieutenant-Governor-in-Council. The terms

of the three Commissioners are staggered so that the term of only one Commissioner expires in any given year. This year Allan F. MacDonald was reappointed for a second three-year term. During 1983 the Commission was comprised of the following members:

Allan F. MacDonald, Chairperson, reappointed September 18, 1983

Kenneth Birtwistle, reappointed July 1, 1982

Ruth MacLeod, appointed December 2, 1981

The administrative staff, working under the supervision and direction of the Commission, comprised the following individuals:

Thomas W. Klewin, part-time Executive Director

Sherry Finley, full-time Administrative Officer

The Commissioners

Allan F. MacDonald, Ph.D., Chairperson, Glenfinnan

Father MacDonald is a sociology professor at the University of P. E. I. Prior to his doctoral degree at the Catholic University of America, he studied at St. Dunstan's, St. Augustine's Seminary, and the University of Toronto. As Director of Extension at St. Dunstan's he initiated programs in labour relations, social action, and community development. During the decade 1965-75 he was involved in the formation and direction of the P. E. I. Rural Development Council, later serving as chairman. He is the official P. E. I. representative on the Continuing Committee of Federal-Provincial Officials Responsible for Human Rights.

Kenneth Birtwistle, Commissioner, Charlottetown

Kenneth Birtwistle is currently serving as a director of the Canadian Foundation for Polio and as a member of the Naval Benevolent Fund. In addition, he is a member of Rotary, the United Services Officers' Club and the Royal Canadian Legion. He held the position of Executive Director of the P. E. I. United Way for a period of ten years. His position with the United Way brought him into close working cooperation with a wide variety of agencies, including many whose members have a

special involvement with the protection offered them in the P. E. I. Human Rights Act. He served in the Canadian Navy from the onset of World War II until 1962, retiring with the rank of Commander. In addition to sea appointments he served in Ottawa as Deputy Director Naval Intelligence, and as Deputy Director Naval Organization, as well as on the NATO staff in Norfolk, Virginia.

Ruth MacLeod, Commissioner, Montague

Ruth MacLeod is currently the Secretary of the Board of Directors of the Montague Housing Authority and Secretary-Treasurer of the Montague Christian Church. In 1960 she was appointed Secretary of Montague Regional High School Unit and in 1972, when the larger Units of School Administration were formed, she was appointed Superintendent of Business Affairs for Regional Administrative Unit Four and continued in that position until retirement in November, 1979. She has been an active member of the Kings County Hospital Ladies' Auxiliary; is a Past President of the Montague Home and School Association and the Provincial Women's Progressive Conservative Association. She has also been active in various community projects such as Community School and a Community Choir.

THE ROLE OF THE COMMISSION

Unlike most other provincial Commissions, the P. E. I. Commissioners are directly involved in the investigation and settlement of complaints as well as in other aspects of the operation of the Commission which normally are the function of most Human Rights Commission staffs. Since the Commission's staff, resources, and the man-hours available for the staff are limited, the P. E. I. Commissioners must assume a larger function and role in the operational activities of the Commission.

During 1983 the Commission held 14 regular meetings and 2 special meetings. The Commissioners were also responsible for reviewing any requests for exemptions to the Act based on "bona fide" qualifications. During 1983 the Commission examined five requests and authorized two unconditionally, placed conditions on a third, renewed one and denied one.

Policy decisions were also formulated and major issues discussed and reviewed at Commission meetings. During the past year the Commission dealt with the following major issues, policies and procedures:

1. The condition of alcoholism as it relates to the issuance of insurance policies.

2. Age, sex, and marital status as valid non-discriminatory aspects in assessing automobile insurance rates.

3. The role of the Commission in Boards of Inquiry. The Commission has appealed the exclusion of its investigative findings from the Charles Craig Board of Inquiry to the Supreme Court of P. E. I.

4. The definition of "political belief". The Commission has appealed the Charles Craig Board of Inquiry definition to the P. E. I. Supreme Court.

5. Age limits as they apply to homes and institutions for special care. The Commission determined that age limits, particularly those which place an entry requirement from the age of 60 upward, are a contravention of the Human Rights Act.

6. Proposed two amendments to bring the P. E. I. Human Rights Act into conformity with the Charter of Rights. The amendments proposed deleting the age limitations of 18-65 from the definition of age, leaving no minimum or maximum age for age discrimination, and adding mental disability to the Act as a proscribed ground of discrimination.

7. Defined marital status as referring to the state of being married, widowed, divorced, single or living in a common law relationship. It is not a violation of the Human Rights Act, however, to discriminate against someone because of the spouse to whom the individual is married. For example, a company can refuse to hire a woman because her husband is working for the company. The refusal is based on her relationship to her husband rather than on the fact she is married.

8. Defined "religion" and "creed" to exclude beliefs which do not normally fall within the context of religion as it has been traditionally defined.

9. Assisted Employment and Immigration Canada in developing a special emphasis program for C.E.I.C.'s Summer Canada Student Employment Programme for P. E. I. which does not discriminate against male students. This was based on the Island's unique type of summer hiring pattern based on industries which provide females and males with equal opportunity for summer employment.

FORMAL, SIGNED COMPLAINTS

During 1983 the Commission dealt with 38 formal complaints, two of which were filed under a dual discrimination allegation. 14 were carried over from 1982; 3, including the Charles Craig complaint, had been referred to the Minister in 1980. Two are awaiting the Supreme Court decision on the Charles Craig Board of Inquiry. The Commission dealt with 5 new areas of discrimination in 1983: Age and sex and access to equal rates in automobile insurance; race and access to a government service; age and access to a facility for special care; marital status and access to an accommodation; pregnancy and employment.

Table I Disposition of formal, signed complaints

	Settled	Referred to Minister	Withdrawn	Carried over	Dismissed	Total
Equal Pay.....	1				6[1]	7
Age.....				3[2]		3
Race, Colour.....	1			1		2
Ethnic/National Origin.	1					1
Marital Status.....	1				1[1]	2
Physical Disability..	4		1	3	1[2]	9
Political Belief.....		3(in 1980)		3		6
Sex.....	2			4[2]		6
Sexual Harassment....	4					4
	14	3	1	14	8	40

1. These complaints were dismissed when the company named as the respondent went into receivership or when a legal opinion indicated the complaints did not fall under the Act.
2. One complaint was filed under age and physical disability, and one complaint was filed under age and sex.

Table II Categories of formal, signed complaints

	Employment	Services	Accommodations	Total
Equal Pay.....	7			7
Age.....	1[1]	1[2]	1	3
Race, Colour.....		2		2
Ethnic/National Origin..			1	1
Marital Status	1		1	2
Physical Disability...	5[1]		4	9
Political Belief.....	6			6
Sex.....	5	1[2]		6
Sexual Harassment.....	4			4
	29	4	7	40

1. One complaint was filed under age and physical disability.
2. One complaint was filed under age and sex.

TYPES OF COMPLAINTS

Employment/Sexual Harassment

During 1983 the Commission settled four complaints relating to sexual harassment in employment. The increase in the number of these kinds of complaints indicates women are beginning to recognize they can work in an environment free of this type of harassment.

In three of the complaints the Commission found sufficient evidence to conclude sexual harassment had taken place and the settlements reflected the differences in the nature of the complaints.

In the first complaint the Commission concluded the woman was fired because she refused a proposition from her employer. Since her job was temporary, the settlement terms included the wages she would have earned if she had worked until the job was terminated. In addition, she was offered a letter of apology.

In the second complaint, the woman had quit her job because her immediate supervisor was sexually harassing her. Settlement terms included a re-hiring under a new supervisor and a guarantee of a letter of recommendation when she left her job. Management had not been aware of the harassment and fully cooperated with the Commission in the settlement of the complaint.

A cash settlement was effected in the third complaint as compensation for the humiliation and mental anguish suffered by the complainant. Management was responsible for the settlement since a supervisory employee had done the harassing.

The Commission did not find sufficient evidence in the fourth complaint to substantiate the complaint. The complainant had alleged that the working costumes the waitresses were required to wear constituted sexual harassment. The Commission found that the costumes were not specifically designed to accentuate the waitresses' sexuality.

Equal Pay for Equal Work

A woman complained that even though she did essentially the same work as males, she was being paid less than the males because women's starting wage was less than that of males. The Commission found that the discriminatory practice did originate with the different wage scales used to hire males and females. A settlement was not achieved, however, because the company terminated its business before a settlement could be effected.

Physical Disability/Employment

A man complained that his employment had been terminated after he had suffered a heart attack. He was terminated after a physician indicated the man was physically unable to continue in his work. Later medical evaluation indicated the individual was qualified to return to work. The Commission concluded that the respondent's decision was based on medical evidence available at the time of dismissal and was not, consequently, discriminatory. However, the Commission noted that if the complainant re-applied for work, the more current medical evidence must be used as criteria for the man's ability to work.

Age, Sex, Marital Status/Access to Services

The Commission accepted a complaint from a young male who alleged he was being discriminated against in the matter of auto insurance premiums because of his age, sex and marital status. Because of the complexity of the issues involved, the Commission's investigation was carried over into 1984.

Physical Disability/Access to Services

The Commission also accepted a complaint from an individual who alleged he was being discriminated against in securing insurance coverage because he was a recovered alcoholic who did not meet the criteria established by the

insurance industry for insuring recovered alcoholics. Again, because of the complexity of the issues involved, the Commission's investigation was carried over into 1984.

COMPLAINTS REFERRED TO THE CANADIAN HUMAN RIGHTS COMMISSION

The P. E. I. Human Rights Commission referred 16 individuals to the Canadian Human Rights Commission in Halifax for information relating to their complaints. Preliminary investigation of the individuals' complaints revealed that the alleged discriminations fell within federal rather than provincial jurisdiction. The Commission assisted these individuals by establishing initial contact with the Canadian Human Rights Commission's regional office in Halifax, Nova Scotia. The majority of the referrals were related to Canada Manpower, unemployment insurance, equal access to credit from banks, and C.N.

MISCELLANEOUS COMPLAINTS

25 inquiries were received by the Commission which might have led to the filing of a formal complaint. These did not reach the formal complaint stage, however, because the individuals did not choose to pursue the inquiries further, or because a resolution was achieved without the necessity of an investigation of a formal complaint. Frequently an explanation of the Act to both parties was sufficient to effect a settlement to the satisfaction of all concerned.

INFORMAL COMPLAINTS AND INQUIRIES

During 1983 the Human Rights Commission handled 219 informal complaints and inquiries that did not fall within the ten prohibited discriminatory categories listed in the Human Rights Act. While none of these inquiries or complaints could be investigated under the Act, the Commission did attempt to assist these individuals in finding

the proper government department or agency to further pursue their problems. These types of cases are time-consuming, but the Commission believes providing informational assistance to these individuals lies within the spirit of the Act.

The most frequent inquiries related to the demand for an individual's Social Insurance Number for a wide variety of reasons; problems related to the Department of Labour; rental difficulties especially concerning refusal to rent to families with children, or students; violations of employment rights; and problems with Canada Manpower and the Unemployment Insurance Commission.

MONITORING OF PRE-EMPLOYMENT APPLICATION FORMS

During 1983 the Commission monitored 9 pre-employment application forms as well as assisting two companies in preparation of their new forms. In addition, the Commission sent out copies of its pre-employment guidelines for job application forms and personal interviews to more than 35 companies and legal offices.

A major task still confronting this Commission is the monitoring of pre-employment application forms used in Prince Edward Island by businesses and industries. The Commission has received some assistance in this area by concerned individuals who have been asked to complete employment application forms which are discriminatory and who have notified the Commission of the discriminatory employment application forms. At present, the Commission has more than a dozen pre-employment application forms to monitor which were sent to this Commission by concerned individuals.

CONTACTS WITH OTHER HUMAN RIGHTS COMMISSIONS; GOVERNMENT MINITSTERS, DEPARTMENTS AND AGENCIES, FEDERAL AND PROVINCIAL; PRIVATE FIRMS; INDIVIDUALS AND NON-GOVERNMENT GROUPS

During 1983 the Commission had numerous contacts with other Human Rights Commissions, government departments

and agencies both at the federal and provincial levels. These involved correspondence, phone conversations and personal conferences with the above mentioned groups in relation to queries sent to the Commission or initiated by the Commission as it sought assistance in answering questions or solving problems relating to human rights. Many of the requests were related to the Commission's precedent-setting decision in accepting the condition of alcoholism as a physical disability covered by the P. E. I. Human Rights Act.

EDUCATIONAL PRESENTATIONS

During 1983 the Commission made 17 educational presentations to a wide variety of organizations and institutions. Because of its manpower constraints, the Commission focused its primary educational outreach to those groups preparing to enter the job market. This was done through seminars conducted at educational institutions at the post-high school level. Special emphasis was placed on reaching women who were reentering the job market.

The Commission's Chairperson and Executive Director were interviewed on a number of occasions on radio and television. In addition, news releases and news conferences were held to inform the public of major policy statements issued by the Commission. Extensive use was made of the media in the Commission's observance of the 35th anniversary of the proclamation of the Universal Declaration of Human Rights.

PROJECTED GOALS

As the Commission looks to 1984, it has begun to explore ways to maximize its educational thrust by greater use of the media and special news conferences. In addition, seminars designed to reach employers as well as the general public are being integrated into the Commission's projected projects for the coming year.

The Commission is also formulating a number of policy statements designed to create a greater awareness of human

rights among the citizens of the Province. Educational materials will also be reviewed and updated to keep the materials current with recent court and boards of inquiry decisions.